



May 14, 2001

Ms. Kristi LaRoe
Assistant District Attorney
Tarrant County
401 W. Belknap
Fort Worth, Texas 76196-0201

OR2001-1971

Dear LaRoe:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 147137.

Tarrant County (the "county") received a request for police report numbers 01013773, 0790161, 0790461, and child protective services report 24178938. In response to this request you provided to this office for review police report number 01013773, police report number 00087880 with related videotape, and child protective services report 24178938. If you have not released police report numbers 0790161 and 0790461, and they exist, you must release them at this time. *See* Gov't Code §§ 552.301, .302.¹ You claim that the requested information is excepted from disclosure under sections 552.101 and 552.103 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

As you note, some of the records at issue are medical records. Access to medical records is governed by the Medical Practice Act ("MPA"), chapter 159 of the Occupations Code rather than by chapter 552 of the Government Code. Open Records Decision No. 598 (1991). Section 159.002 of the MPA provides:

(b) A record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that is created or maintained by a physician is confidential and privileged and may not be disclosed except as provided by this chapter.

¹Because you have not submitted this information, we have no choice but to order the information released per section 552.302 of the Government Code. If you believe that the information is confidential and may not lawfully be released, you must challenge this decision in court as outlined below.

(c) A person who receives information from a confidential communication or record as described by this chapter, other than a person listed in Section 159.004 who is acting on the patient's behalf, may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

Information that is subject to the MPA includes both medical records and information obtained from those medical records. *See* Occ. Code §§ 159.002, .004; Open Records Decision No. 598 (1991). Such records must be released upon the patient's signed, written consent, provided that the consent specifies (1) the information to be covered by the release, (2) reasons or purposes for the release, and (3) the person to whom the information is to be released. Occ. Code §§ 159.004, .005. Section 159.002(c) also requires that any subsequent release of medical records be consistent with the purposes for which the governmental body obtained the records. Open Records Decision No. 565 at 7 (1990). The records that you have marked as "medical records" in the submitted materials may be released only in accordance with the MPA.

The submitted information includes materials used in an investigation of reported child abuse or neglect. Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This exception includes information made confidential by statute. Section 261.201 of the Family Code governs release of information related to reports of child abuse or neglect. In pertinent part it reads:

(a) The following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

(1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and

(2) except as otherwise provided in this section, the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

Report number 24178938 indicates that Child Protective Services conducted an investigation of child abuse or neglect. These materials indicate that "case Id 00087880" was reviewed as part of that investigation. We conclude that report 24178938 and police report

number 00087880, including the related videotape, constitute reports, records, and working papers used or developed in an investigation made under chapter 261 of the Family Code. This information is therefore confidential by statute. As you have not cited any specific rule that the county has adopted with regard to the release of this type of information, these records are presumed confidential in their entirety. *See* Open Records Decision No. 440 at 2 (1986). Accordingly, the county must withhold this information under section 552.101 of the Government Code.²

Finally, we address your claim that the submitted information is excepted from disclosure by section 552.103. As we have already determined that report numbers 00087880 and 24178938 must be withheld from disclosure pursuant to section 552.101 of the Government Code, we need only address whether report number 0101373 may be withheld under section 552.103 of the Government Code. Section 552.103(a), the "litigation exception," excepts from disclosure information relating to litigation to which the state or a political subdivision is or may be a party. To secure the protection of section 552.103(a), a governmental body has the burden of providing relevant facts and documents to show that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. *University of Tex. Law Sch. v. Texas Legal Found.*, 958 S.W.2d 479, 481 (Tex. App.--Austin 1997, no pet.); *Heard v. Houston Post Co.*, 684 S.W.2d 210 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.). Further, to be excepted under section 552.103, the information must relate to litigation that is pending or reasonably anticipated on the date that the information was requested. Gov't Code § 552.103(c). To demonstrate that litigation is reasonably anticipated, the governmental body must furnish *concrete* evidence that litigation involving a specific matter is realistically contemplated and is more than mere conjecture; the mere chance of litigation will not establish the litigation exception. Open Records Decision No. 452 at 4 (1986). Whether litigation is reasonably anticipated must be determined on a case-by-case basis. *Id.*

You state that the requestor is seeking copies of offense reports related to criminal assault charges filed against the requestor. You also state that the requestor has been convicted of assault and that appeals in that case have not been exhausted. We note, however, that police report number 01013773 is a report of a possible burglary, unrelated to the aforementioned

²We note that if the investigation has been referred to the Department of Protective and Regulatory Services ("DPRS"), the requestor, who is a parent, may be entitled to access DPRS's records. Section 261.201(g) of the Family Code provides that DPRS, upon request and subject to its own rules:

shall provide to the parent, managing conservator, or other legal representative of a child who is the subject of reported abuse or neglect information concerning the reported abuse or neglect that would otherwise be confidential under this section if the department has edited the information to protect the confidentiality of the identity of the person who made the report and any other person whose life or safety may be endangered by the disclosure.

assault case, wherein the requestor is the victim, not the suspect or defendant. You have not shown how this report relates to any pending or anticipated litigation. Therefore, we conclude that police report number 0101373 is not excepted from disclosure by section 552.103 of the Government Code.

To summarize, we conclude that: (1) the county may release the information designated as "Medical Records" only in conformity with the MPA; (2) the county must withhold police report number 00087880, with its related videotape, and report 24178938 pursuant to section 552.101 of the Government Code; and (3) the county must release police report number 0101373.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).


If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Karen A. Eckerle
Assistant Attorney General
Open Records Division

KAE/MJB/sdk

Ref: ID# 147137

Encl: Submitted documents

cc: Mr. James A. Cooksey
602 School House Road
Haslet, Texas 76052
(w/o enclosures)